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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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ETAGZ, INC., an Indiana Corporation,

Plaintiff,

v.

CHERI MAGAZINE, INC., a New York Corporation; CLUB MAGAZINE, INC., a New Jersey Corporation; FOX MAGAZINE, a New Jersey Corporation; GIRLS GONE WILD, a California Corporation; HIGH SOCIETY MAGAZINE, INC., a New York Corporation; and DOES 1-10.

Defendants.

**PLAINTIFF'S COMPLAINT FOR  
PATENT INFRINGEMENT**

**Case No: 2:10-cv-01266**

**Judge Dale A. Kimball**

**JURY TRIAL DEMANDED**

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Plaintiff, Etagz, Inc. ("Etagz"), by and through its attorneys, asserts as its Complaint against Defendants, Cheri Magazine, Inc. ("Cheri"), Club Magazine, Inc. ("Club"), Fox Magazine ("Fox"), Girls Gone Wild ("GGW"), and High Society Magazine ("Society"), as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This is a claim for patent infringement that arises under the patent laws of the United States, including 35 U.S.C. § 281. This Court has exclusive subject matter jurisdiction under 28 U.S.C. § 1338.

2. Etagz is an Indiana corporation, with its principal place of business in Provo, Utah.

3. Etagz owns and has all right, title and interest, including standing to sue for past, present or future infringement, in United States Patent No. 6,298,332 (the “’332 Patent,” attached as Exhibit A) entitled “CD-Rom Product Label Apparatus and Method,” No. 7,503,502 B2 (the “’502 Patent,” attached as Exhibit B) entitled “Computer Readable Hang Tag and Product,” and No. 7,703,686 B2 (the “’686 Patent,” attached as Exhibit C) entitled “Consumer-Computer-Readable Product Label and Apparatus.”

4. Cheri is a New York Corporation with its principal place of business at 801 Second Avenue, New York, New York 10017.

5. Club is a New Jersey Corporation with its principal place of business at 210 North Route 4 East #211, Paramus, New Jersey, 07652.

6. Fox is a New Jersey Corporation with its principal place of business at 210 North Route 4 East #211, Paramus, New Jersey, 07652.

7. GGW is a California Corporation with its principal place of business at 1601 Cloverfield Boulevard, Suite 420, Santa Monica, California 90404.

8. High Society is a New York Corporation with its principal place of business at 801 Second Avenue, New York, New York 10017.

9. Cheri, Club, Fox, GGW and Society have committed acts of infringement within this judicial district. Venue is proper in this district under 28 U.S.C. §§ 1391 and 1400.

**PATENT INFRINGEMENT**

10. Etagz realleges and incorporates by reference as if fully set forth herein the preceding paragraphs.

11. Etagz has complied with the provisions of 35 U.S.C. § 287.

12. Defendants have infringed at least claims 11 and 16 of the ‘332 Patent and one or more claims of the ‘502 and ‘686 Patents, by, at a minimum, selling magazines with a label including a computer readable medium.

13. Defendants’ infringement has injured Etagz, and Etagz is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonable royalty.

14. Defendants’ infringing activities have injured and will continue to injury Etagz unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further infringement of the ‘332, ‘502 and ‘686 Patents.

**ALTER EGO**

15. Etagz realleges and incorporates by reference as if fully set forth herein the preceding paragraphs.

16. Upon information and belief, Cheri has one or more affiliates or shell companies, including, but not limited to Half Moon Media representatives, Blue Horizon Media and Trans Digital Media, LLC (“Does 1 to 10”).

17. Upon information and belief, Cheri and its affiliates or shell companies had such a unity of interest, ownership and control that the separate personalities of the parties did not exist, but were instead the alter ego of each other.

18. Additionally, upon information and belief, Cheri and its affiliates or shell companies have become the alter ego of each other through all or any of the following factors: (1) undercapitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) siphoning of corporate funds; (5) absence of corporate records; (7) the use of the corporation as a facade for individual/personal operations; and (8) the use of the corporate entity in promoting injustice or fraud.

19. Upon information and belief, Club has one or more affiliates or shell companies, including, but not limited to Magna Publishing Group (“MGP”), Martin Puntus – Advertising Director for MPG (“Puntus”), Evan Honig – Director of Circulation for MPG (“Honig”), Club International and Club Confidential (“Does 1 to 10”).

20. Upon information and belief, Club and its affiliates or shell companies had such a unity of interest, ownership and control that the separate personalities of the parties did not exist, but were instead the alter ego of each other.

21. Additionally, upon information and belief, Club and its affiliates or shell companies have become the alter ego of each other through all or any of the following factors: (1) undercapitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) siphoning of corporate funds; (5) absence of corporate records; (7) the use of the corporation as a facade for individual/personal operations; and (8) the use of the corporate entity in promoting injustice or fraud.

22. Upon information and belief, Fox has one or more affiliates or shell companies, including, but not limited to MPG, Puntus, and Honig (“Does 1 to 10”).

23. Upon information and belief, Fox and its affiliates or shell companies had such a unity of interest, ownership and control that the separate personalities of the parties did not exist, but were instead the alter ego of each other.

24. Additionally, upon information and belief, Fox and its affiliates or shell companies have become the alter ego of each other through all or any of the following factors: (1) undercapitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) siphoning of corporate funds; (5) absence of corporate records; (7) the use of the corporation as a facade for individual/personal operations; and (8) the use of the corporate entity in promoting injustice or fraud.

25. Upon information and belief, GW has one or more affiliates or shell companies, including, but not limited to GW Marketing LLC, Mantra Films Inc., and Joe Francis (“Does 1 to 10”).

26. Upon information and belief, GW and its affiliates or shell companies had such a unity of interest, ownership and control that the separate personalities of the parties did not exist, but were instead the alter ego of each other.

27. Additionally, upon information and belief, GW and its affiliates or shell companies have become the alter ego of each other through all or any of the following factors: (1) undercapitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) siphoning of corporate funds; (5) absence of corporate records; (7) the use of the

corporation as a facade for individual/personal operations; and (8) the use of the corporate entity in promoting injustice or fraud.

28. Upon information and belief, Society has one or more affiliates or shell companies, including, but not limited to Half Moon Media representatives, Blue Horizon Media and Trans Digital Media, LLC (“Does 1 to 10”).

29. Upon information and belief, Society and its affiliates or shell companies had such a unity of interest, ownership and control that the separate personalities of the parties did not exist, but were instead the alter ego of each other.

30. Additionally, upon information and belief, Society and its affiliates or shell companies have become the alter ego of each other through all or any of the following factors: (1) undercapitalization; (2) failure to observe corporate formalities; (3) nonpayment of dividends; (4) siphoning of corporate funds; (5) absence of corporate records; (7) the use of the corporation as a facade for individual/personal operations; and (8) the use of the corporate entity in promoting injustice or fraud.

31. Observation of the corporate form of Cheri, Club, Fox, GGW and Society as separate from their affiliates or shell companies would sanction a fraud, promote injustice, or result in an inequity.

32. Because Cheri, Club, Fox, GGW and Society and their respective affiliates or shell companies are the alter egos of one another, each is jointly and severally liable for the obligations of one another, and judgment must be entered against them jointly and severally, in an amount to be more fully proven at trial.

WHEREFORE, Plaintiff Etagz respectfully requests this Court to enter judgment against all Defendants and their subsidiaries and affiliates and all persons in active concert or participation with them, as follows:

- A. An entry of final judgment in favor of Etagz and against Cheri, Club, Fox, GGW and Society and Does 1 to 10;
- B. An award of damages adequate to compensate Etagz for the infringement that has occurred, but in no event less than a reasonable royalty as permitted by 35 U.S.C. § 284, together with prejudgment interest from the date the infringement began;
- C. An injunction permanently prohibiting Cheri, Club, Fox, GGW, Society and Does 1 to 10 and all persons in active concert or participation with any of them from further acts of infringement of the '332, '502 and '686 Patents;
- D. Treble damages, attorneys fees and costs.
- E. Such other further relief that Etagz is entitled to under the law, and any other and further relief that this Court or a jury may deem just and proper.

**TRIAL BY JURY DEMANDED**

Etagz demands a trial by jury on all issues presented in this Complaint.

DATED: December 22, 2010

Respectfully submitted,

PIA ANDERSON DORIUS REYNARD & MOSS

/s/ Joseph G. Pia  
Joseph G. Pia  
*Attorney for Plaintiff Etagz, Inc.*